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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re H.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

H.H.,

Defendant and Appellant.

A155382

(Alameda County
Super. Ct. No. JV030034-01)

H.H. (appellant) appeals from an order placing her on probation without declaring a wardship under Welfare and Institutions Code section 725, subdivision (a).¹ The probation order was predicated on the juvenile court's finding that she had committed an assault by means of force likely to produce great bodily injury under Penal Code section 245, subdivision (a)(4), based on her participation in a group attack on A.B. She contends the evidence was insufficient to support the judgment because the victim's eyewitness testimony was unreliable and there was no evidence that appellant's actions caused the victim's injuries. We affirm.

¹ Such orders are appealable. (*In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 587–590.)

I. BACKGROUND

In September of 2017, A.B. was involved in a physical altercation with appellant in which A.B. dragged appellant down a flight of stairs and was suspended from school as a result. On October 28, 2017, A.B. attended a Haunt Night, a Halloween event at the Great America amusement park. At about 10:00 p.m., she was waiting in line for a teacup ride with her friend M.T. when she noticed appellant and her mother waiting in line with appellant's other friends. One of them, R.S., approached A.B. with her mother L.S. and punched her in the side. Others, including appellant and her mother, joined the attack. A.B. saw appellant strike her four times with her fists and kick her four times on her stomach and face as she lay on the ground and tried to cover up. When L.S. deployed a Taser on A.B., the attackers dispersed. A.B. telephoned her mother for assistance, and her mother called the police. A.B. suffered Taser burns, scratched eyes and hands, and a bruised face, along with the lingering symptoms of a concussion. She told police in an interview on October 31, 2017 that she saw appellant kick her three or four times.

The Santa Clara district attorney filed a juvenile wardship petition under Welfare and Institutions Code section 602 alleging that appellant had committed an assault by means of force likely to cause great bodily injury. (Pen. Code, § 245, subd. (a)(4).) A hearing was held in which A.B. identified a video of the beating and identified appellant in the video. A.B. identified appellant's shoes striking her and appellant pulling her hair.

Appellant testified that she tried to stop the fight and denied striking or kicking A.B. She admitted that the video of the fight showed her pulling her arm back, but indicates she was pushing away from the fight. Brandi K., who was with the group, saw the fight and testified that appellant remained on the side, just watching.

The juvenile court viewed a video taken of the fight and sustained the petition. It reduced the assault to a misdemeanor "given the confusion, the number of kids involved and the only partial responsibility of [appellant]." The case was transferred to Alameda County, where appellant lived, and she was placed on probation without a declaration of a wardship.

II. DISCUSSION

Appellant contends the evidence was insufficient to support the juvenile court's finding that she committed an assault by means of force likely to cause great bodily injury. She argues the evidence did not show she participated (at least, to a sufficient degree) in the attack. We reject the claim.

The standard of proof is the same in a juvenile proceeding as in adult criminal trials, and we apply the same standard of review when assessing the sufficiency of the evidence to support a judgment. (*In re Winship* (1970) 397 U.S. 358, 368; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) “[W]e ask not whether there is evidence from which the trier of fact could have reached some other conclusion, but whether, viewing the evidence in the light most favorable to respondent, and presuming in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence, there is substantial evidence of appellant’s guilt, i.e., evidence that is credible and of solid value, from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Thus, our sole function as a reviewing court in determining the sufficiency of the evidence is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*In re Michael M.* (2001) 86 Cal.App.4th 718, 726, fns. omitted; see also *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088–1089.)

“[A]bsent physical impossibility or inherent improbability, the testimony of a single eyewitness is sufficient to support a criminal conviction.” (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) As an appellate court, we may not resolve credibility issues or evidentiary conflicts. (*People v. Maury* (2003) 30 Cal.4th 342, 403.) The victim in this case testified that appellant participated in a group attack against her by kicking her, punching her and pulling her hair. The court reviewed a video of the attack, which though not completely clear, was not inconsistent with this account.² Appellant had a motive to participate in the attack, having fought with the victim the previous month.

² This court has reviewed a video of the attack, which was apparently taken on a bystander’s cell phone.

The juvenile court could reasonably conclude that appellant was guilty of the assault, and appellant's arguments to the contrary are little more than requests that we reweigh the evidence.

Appellant argues the evidence was insufficient because assuming the juvenile court could credit A.B.'s initial statement to police that appellant kicked her three or four times, this conduct was not an assault likely to cause great bodily injury under Penal Code section 245, subdivision (a)(4). We disagree.

Penal Code section 245, subdivision (a)(4) "is directed at the force used, and it is immaterial whether the force actually results in any injury. The focus is on force likely to produce great bodily injury." (*People v. Parrish* (1985) 170 Cal.App.3d 336, 343; see also *People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1066.) "That the use of hands or fists alone may support a conviction of assault 'by means of force likely to produce great bodily injury' is well established. . . ." (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) While not conclusive, the fact that an assault actually results in great bodily injury, i.e., "bodily injury which is significant or substantial, not insignificant, trivial or moderate," is highly probative on the issue of whether the force used was likely to produce such injury. (*People v. McDaniel* (2008) 159 Cal.App.4th 736, 748.)

"[A] person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117; see also Pen. Code § 31.) "[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561.)

Even if appellant's own acts were unlikely, standing alone, to cause great bodily injury, she aided and abetted other assailants in committing a group beating that resulted in a Taser burn, a concussion, scratches and a bruised face. (See *People v. Chavez* (2018) 22 Cal.App.5th 663, 685–686 [sufficient evidence that defendant aided and abetted assault when he joined in physical altercation after it began]; *People v. Brown* (1980) 110

Cal.App.3d 24, 34 [defendant properly convicted as part of group that attacked and robbed victim].) From the victim's injuries, the court could conclude that the attack as a whole was one likely to cause great bodily injury, and that appellant was liable for aiding and abetting this conduct, even if her own conduct would amount only to simple assault or battery if she acted alone. Appellant was properly found culpable for assault likely to cause great bodily injury based on her participation in the attack.³

III. DISPOSITION

The judgment is affirmed.

³ A defendant who personally assaults the victim in a group beating may be liable for punishment under the personal infliction of great bodily injury enhancement under Penal Code section 12022.7(a) when she "joins a group attack, and directly applies force to the victim sufficient to inflict, or contribute to the infliction of, great bodily harm." (*People v. Modiri* (2006) 39 Cal.4th 481, 486.) Here, the enhancement provision was not alleged against appellant; the only question is whether there was sufficient evidence she aided and abetted an assault by means likely to cause great bodily injury by her own conduct.

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.

People v. H.H. / A155382